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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. 1141.

STRICKLAND TRANSPORTATION COMPANY, INC.,
Appellant,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ARKANSAS-BEST FREIGHT SYSTEM, INC., GORDONS TRANSPORTS, INC., BRASWELL MOTOR FREIGHT LINES, INC., RED BALL MOTOR FREIGHT, INC., and HERRIN TRANSPORTATION CO.,
Appellees.

On Appeal from the United States District Court for the Central District of California.

MOTION TO AFFIRM.

BUTLER, SNOW, O'MARA, STEVENS & CANNADA,
Post Office Box 22567,
Jackson, Mississippi 39205,

THOMAS HARPER,
Post Office Box 43,
Fort Smith, Arkansas 72901,

CHARLES D. MATHEWS,
Post Office Box 47404,
Dallas, Texas 75247,

WRAPE & HERNLY,
2111 Sterick Building,
Memphis, Tennessee 38103,
Of Counsel.

ROBERT E. JOYNER,
2111 Sterick Building,
Memphis, Tennessee 38103,

PHINEAS STEVENS
Post Office Box 22567,
Jackson, Mississippi 39205,

Attorneys for Appellees, Arkansas-Best Freight System, Inc., Gordons Transports, Inc., and Red Ball Motor Freight, Inc.

St. Louis Law Printing Co., Inc., 411-15 N. Eighth St., 63101. CEntral 1-4477.

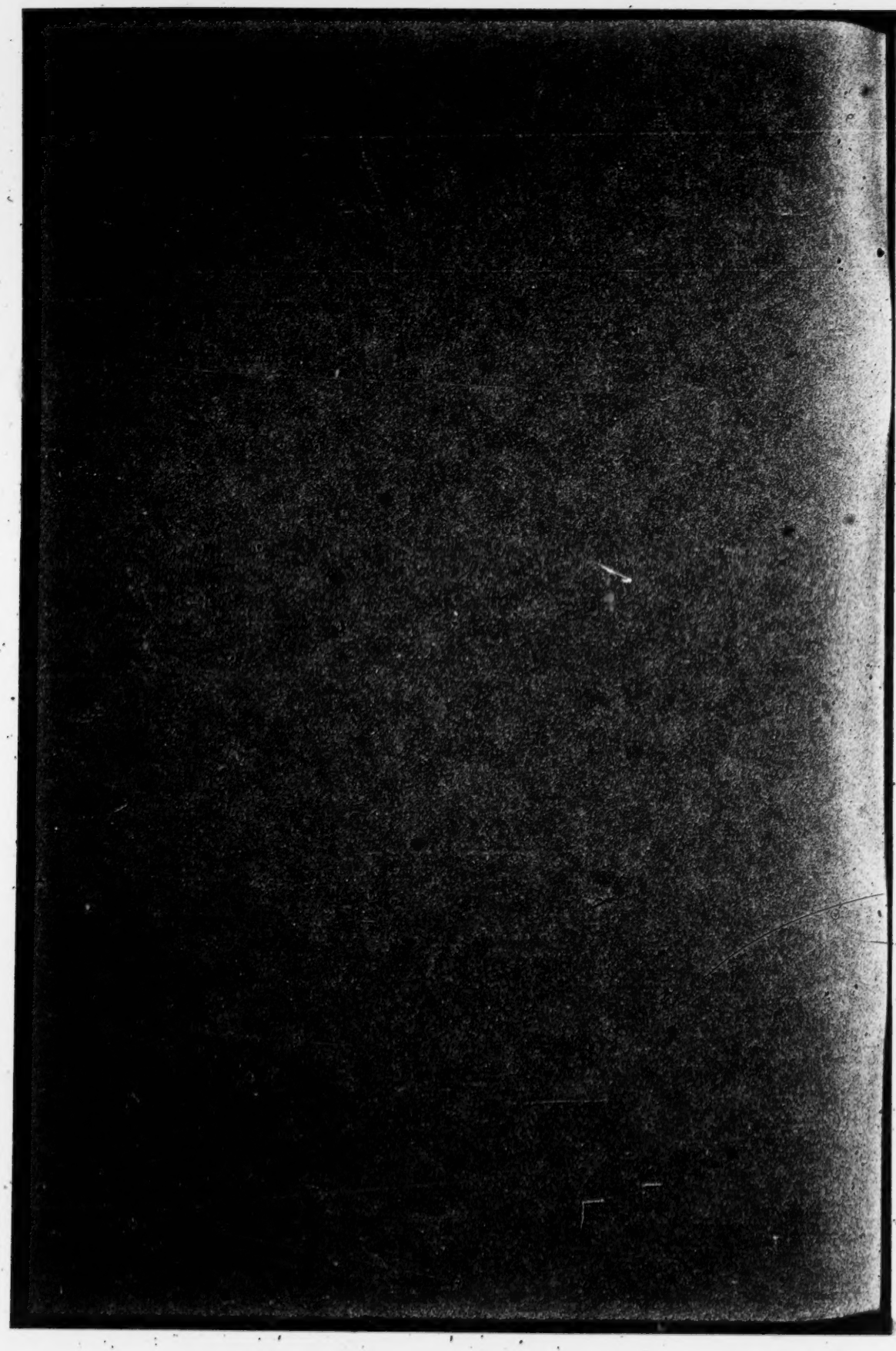


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MOTION TO AFFIRM.

Pursuant to Rule 16.1 (c) and (d), appellees, Arkansas-Best Freight System, Inc., Gordons Transports, Inc., and Red Ball Motor Freight, Inc., respectfully move that the judgment below of the District Court (J. S. App. A) entered December 2, 1968, be affirmed, upon the grounds that the decision of the court below is correct, the decision of the Interstate Commerce Commission thereby upheld is correct, and the questions raised in the Jurisdictional Statement are manifestly so unsubstantial as not to need further argument.

PREFACE.

These appellees do not question the jurisdiction of this Court to review directly on appeal the decision below of the statutory three-judge court, which upheld unanimously a decision of the Interstate Commerce Commission. **Strickland Transportation Co., Inc.—Purchase (Portion)—England Transportation Co., Inc.**, 104 M. C. C. 297 (J. S. App. C). Neither do they question the applicability of the Interstate Commerce Act.

They do, however, question in succeeding portions of this motion, many statements asserted in the Jurisdictional Statement.

Moreover, they question the substantiality of the questions presented.

STATEMENT OF THE CASE.

Appellant's Jurisdictional Statement describes a case vastly different from that presented to and considered by the Interstate Commerce Commission ("Commission"). The issues stated are not those presented to the Commission or the court below, and facts stated vary in material respects from those of record. The record was quite extensive, and because numerous issues were involved that are not mentioned in the Jurisdictional Statement, certain background information is appropriate.

Involved here is one of a series of attempts by appellant, Strickland Transportation Co., Inc. ("Strickland"), to haul freight between its service points in the Northeast and Midwest, on the one hand, and, New Orleans, on the other; a service by Strickland for which public need or convenience has never been shown.

At present, Strickland has authority to serve New Orleans only via Dallas or Houston, not directly through points in northern Louisiana, such as Monroe and Shreveport. From and to Midwest and Northeast points, Strickland's most direct operations must come "by a circuitous route from Texarkana via Houston and Beaumont." 104 M. C. C. at 303.

This appeal involves primarily the proposal of Strickland to purchase certain operating authority now held by England Transportation Company ("England"). England is a small motor carrier with authority to transport general freight between New Orleans and all points in Louisiana over **irregular** routes. It is a local distribution carrier that has traditionally rendered a "simple peddle service" out of New Orleans. 104 M. C. C. at 319.

Strickland is an entirely different type of carrier. It is a large, long-haul, regular-route[1] carrier, operating over

[1] Appreciation of the important distinction between **regular**- and **irregular**-route operating authority is essential to certain

half of the United States. It has an east-west route into New Orleans extending across southern Louisiana from Houston, and routes from northern points extending as far south toward New Orleans as Shreveport and Monroe, La. But it has no operationally feasible route between New Orleans and Midwestern and Northern points.

Several years prior to the present proceeding, Strickland sought to acquire England by purchase of its capital stock. This acquisition would have permitted Strickland to operate via Shreveport and Monroe directly southward into New Orleans, thereby giving Strickland, for the first time, an operationally feasible route into New Orleans from its Midwestern and Northern points. This application was denied by the Commission, which concluded that any benefits to the public resulting from the proposal would be "scant"; that it "would adversely affect the efficiency and economy of" operations conducted by existing New Orleans carriers; that the operations of England "have been confined principally to a distribution service from New Orleans" and that "a radical change would result in the complexion of the operations of England and that following such change its operations would bear little resemblance to the service that has heretofore been provided under its rights." **Strickland Transportation Co., Inc.—Control—England Transportation Co., Inc.**, 85 M. C. C. 549 (1960).

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issues involved. Regular-route carriers, such as Strickland, may render scheduled service over designated routes between fixed termini. Irregular-route carriers, such as England, are **prohibited** from performing such service. They are restricted to the rendition of unscheduled, call-on-demand service within their prescribed territory. The ICC has vigorously enforced this distinction: "Repeatedly . . . carriers have been warned that they cannot without appropriate authority convert an authorized irregular-route operation or service, in all or in part, into a regular-route operation or service." **Transportation Activities, Brady Transfer & Storage Co.**, 47 M. C. C. 23, 36 (1947). **Accord, Classification of Motor Carriers of Property**, 2 M. C. C. 703, 709 (1937).

Having failed in this effort to acquire an operationally feasible route into New Orleans from points north and east thereof, Strickland then set about to circumvent the Commission's decision by use of railroad piggyback service into New Orleans from St. Louis and Chicago. This maneuver was deemed unlawful by the Commission. **Gordons Transp., Inc. v. Strickland Transp. Co., Inc.**[2]

Strickland next set about, without Commission knowledge or approval, to use the England rights to move freight between Shreveport and New Orleans. Strickland has called this arrangement an "interchange" of freight. Appellees contended, and the Commission agreed, that there was no "interchange" of freight between Strickland and England. The arrangement was an ingenious subterfuge that consisted of operations **by Strickland** (not England) between Shreveport and New Orleans without appropriate authority. Accordingly, Strickland thereby placed itself in direct violation of the provisions of the Interstate Commerce Act requiring a carrier to hold an appropriate certificate or permit before engaging in operations over any particular route. 49 U. S. C., §§ 303 (c), 306 (a) (1).

During this period of unlawful operations by Strickland between Shreveport and New Orleans, both Strickland and England also participated in other unlawful operations ("cross-hauling"), ostensibly under England's authority. 104 M. C. C. at 317. England (but not Strickland) claimed such was done in reliance upon certain letters written by an ICC field representative, but the Commission recognized that the unlawfulness of such practices had been too clearly defined and prohibited "in cases too numerous to mention" to afford plausibility to any "color of right" claim. 104 M. C. C. at 317.

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[2] 318 I. C. C. 395 (1962), **aff'd**, 219 F. Supp. 618 (N. D. Tex. 1963). This case is discussed in text accompanying note 14 *infra*.

While participating in the unlawful "interchange" arrangement, England declined to sign a collective bargaining agreement with its employees and chose instead to discontinue operations. England's equipment and operating rights were offered at auction. Strickland and another carrier[3] sought to carve up the England territory so that both would receive authority to serve New Orleans, Strickland from the north half of Louisiana and the other carrier from the south half.

Strickland and England then filed joint application seeking approval by the Commission under section 5 of the Interstate Commerce Act of the sale of this portion of the England rights. Strickland[4] also filed application under section 207 of the Act seeking issuance of new **regular**-route authority between Shreveport and New Orleans.[5] Since this application was conditioned upon approval of the corresponding purchase application, it was treated as an application to "convert" a portion of the England irregular-route authority into regular-route au-

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[3] Consolidated Copperstate Lines. The resulting application seeking approval of the sale to Copperstate is the subject of a related proceeding now pending before this Court, No. 1128 O. T. 1968, **Consolidated Copperstate Lines v. United States.**

[4] Not Strickland **and England,** as stated in J. S., p. 11.

[5] J. S., p. 11, states: "On September 30, 1964, the Commission authorized Strickland to begin temporary operations over the Shreveport-New Orleans route pending decision upon its application, and on February 5, 1965, authorized temporary operations over the Monroe route." This is not correct. The Commission authorized only a temporary **lease** to Strickland of England's irregular-route authority. There is no "Shreveport-New Orleans route" and no "Monroe route" described in such lease or in the Commission's order granting temporary authority. 104 M. C. C. at 299. It is true, however, that Strickland has continuously operated under this temporary authority **as if it did authorize regular-route service.** This unlawful operation is being boldly continued pending disposition of this appeal.

thority, but only between Shreveport and New Orleans.[6] Both proceedings are involved in this appeal.

The Jurisdictional Statement throughout refers to Strickland's request to purchase "two England routes," one route between Shreveport and New Orleans and the second between Monroe and New Orleans depicted on the map, J. S., p. 9. See, *e. g.*, J. S., pp. 9, 10, 11, 24, 35, 36. **This is an inaccurate and misleading characterization of the operating rights involved.** England has no "Shreveport-New Orleans route" and no "Monroe-New Orleans route," as such. England has only the right to render unscheduled, call-on-demand, irregular-route service between New Orleans and **all** points, cities, towns and villages in Louisiana. Reference to two routes, however, patently reveals Strickland's purpose and intent in seeking acquisition of the England irregular-route authority. This purpose is the same now as when Strickland filed its initial application to purchase England. **Strickland obviously has no desire nor intent to serve the public in all points in Louisiana in the manner contemplated and intended by the Commission when the England rights were issued.** Strickland's only interest is direct, short-line, regular routes extending from Shreveport and Monroe to New Orleans to connect with other routes to provide service to the Northeast and Midwest.[7]

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[6] The term "convert" is inaccurate, since there was no corresponding proposal by Strickland or England to surrender any of the irregular-route authority extending throughout the north half of Louisiana. 104 M. C. C. at 306. The § 207 application simply sought a new, regular route **in addition to** the England irregular routes. This application was necessary because Strickland's objective was to extend its regular-route, scheduled service into New Orleans via Shreveport and it recognized that acquisition of the England irregular-route authority would not permit the rendition of such scheduled service.

[7] Since Strickland cannot lawfully perform this scheduled service over England's irregular routes, the question might arise as to why the ICC would entertain an application such

In rejecting Strickland's first application to purchase England, the Commission concluded that "a radical change would result in the complexion of the operations of England" upon acquisition by Strickland; that the proposed operations "would bear little resemblance to the service that has heretofore been provided under its original rights"; and that "approval of the instant application would adversely affect the efficiency and economy of" existing operations to or from New Orleans. 85 M. C. C. at 555, 556.

In the proceeding now under review, **identical** conclusions were reached:

> Moreover, the effects of such a move, providing the final link over the Monroe gateway in a **regular** route extending from Boston to New Orleans would create a service which is so vastly different from the simple peddle service provided by England out of New Orleans that an entirely new and different

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as this, seeking to join Strickland's regular routes with England's irregular routes. The answer is: Strickland, as a regular-route carrier, is not **prohibited** from performing unscheduled, call-on-demand service over its regular routes. It therefore **could** lawfully perform this limited type of service over its regular routes combined with England's irregular routes. Strickland's proposal is objectionable because it proposes only to extend its **scheduled, regular**-route type of operation over England's **irregular** routes, thereby violating the Commission's requirement "that where regular- and irregular-route authorities are combined, it is the character of the irregular-route service which must be maintained. . . . This is necessarily so because, although an irregular-route carrier is not permitted to provide a regular-route service, a regular-route carrier, so long as it provides reasonably adequate service at the points on its routes which it is authorized to serve, is not required to operate according to a fixed schedule and is not restricted against the performance of a call-on-demand, truckload type of service." **Motor Common Carriers of Property—Routes and Service**, 88 M. C. C. 415, 435 (1961). Strickland does not render **and does not propose to render** any unscheduled, call-on-demand service, either throughout north Louisiana or between New Orleans and Shreveport or Monroe.

> service would be created, which could not but have an adverse effect on the existing competitive situation. . . . As we found in the **prior Strickland-England** case, the acquisition of England's irregular route rights by Strickland and conversion to a link in its long-line regular routes would be of little public benefit and would be certain to harm the operations of existing carriers. 104 M. C. C. at 318-319.

In the prior proceeding, Strickland was not given temporary authority to operate England pending determination of the purchase application, and Strickland did not appeal from the Commission decision denying the purchase. Here, temporary authority was granted[8] and, by prosecuting appeals and obtaining stays Strickland has prolonged its operations under such temporary authority for nearly five years. Ironically, however, it is significant to note that in the present decision, the Commission denied the application for the **identical** reasons that required denial of the first application, **plus several additional reasons not present in the first case.**

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[8] Without a hearing, based upon allegations no longer pertinent.

ARGUMENT.

I.

No Substantial Federal Question Is Involved.

The Jurisdictional Statement presents three questions. In these, Strickland has ignored the clear pronouncement by the Commission that the applications under review were "denied for all the foregoing reasons" specified. 104 M. C. C. at 319. The Jurisdictional Statement makes no mention whatever of the most important of these reasons, being the identical reasons which required denial in the first **Strickland-England** case. These reasons are by no means unique. On the contrary, they are the same type of reasons traditionally found in decisions of the Commission in section 5 proceedings. Basically, the Commission simply held that, as in the first **Strickland-England** case, the applicants failed to sustain their burden of establishing that the proposal would be "consistent with the public interest."

Appellant does not deny that the court below considered and applied "the established rules of judicial review," summarized in the court's opinion. Neither does the Jurisdictional Statement demonstrate that the lower court erred in concluding "the proceedings establishes that the Commission's orders were based on substantial evidence and according to applicable law" (J. S. App. A).

There is, therefore, no new, novel, or substantial question presented by this appeal.

II.

The Commission's Decision Is Clearly Correct.

The Commission predicated its decision upon several different grounds, clearly specified in its report, and concluded that the applications "will be denied for all the foregoing reasons."

A. Strickland's proposed operations "would be of little public benefit," and "would be certain to harm the operations of existing carriers." 104 M. C. C. at 319.

These findings concern the fundamental issue before the Commission in any section 5 proceeding, *i. e.*, the statutory requirement that applicant prove the proposed transaction to be consistent with the public interest. As stated in **Texas v. United States**, 292 U. S. 522, 531 (1934), the criterion in proceedings of this nature "is that of the controlling public interest." As used in the statute, that term "is not a mere general reference to public welfare, but, as shown by the context and purpose of the Act, 'has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities.'"

In considering the "best use of transportation facilities," the Commission recognized that the Strickland proposal "would create a service which is so vastly different from the simple peddle service provided by England out of New Orleans that an entirely new and different service would be created which could not but have an adverse effect on the existing competitive situation." 104 M. C. C. at 319.

These reasons, standing alone, required denial of the first **Strickland-England** case. The Commission expressly recognized that the same conclusions are required here "as we found in the **prior Strickland-England** case." Accordingly, because Strickland is proposing again to use the same England rights in an improper manner, and Strickland is proposing again a new service of "little public benefit," and because the proposal again "would be certain to harm the operations of existing carriers," the Commission denied again the application upon the specific criteria of **Texas v. United States.** These reasons

were sufficient in the first case and adequately support the Commission's denial in the instant case.

B. **The "public convenience and necessity has not been shown to require operations by Strickland" over the proposed regular route between Shreveport and New Orleans. 104 M. C. C. at 326.**

Strickland cannot lawfully perform its proposed type of operations to and from New Orleans without possessing **regular**-route authority.[9] In the section 5 proceeding it sought to purchase **irregular**-route authority which would not suffice for this purpose. Accordingly, Strickland also filed its section 207 application seeking regular-route authority between Shreveport and New Orleans and presented evidence seeking to establish that the public convenience and necessity require such operations. **The evidence presented, however, was nominal.** Only **seven** shippers or receivers of freight testified. **None mentioned deficiencies in existing service.** In discussing this evidence, the Commission found:

> The shipper testimony here is mostly from shippers far distant from the routes involved, shippers who have many alternative methods of handling their traffic. Even those whose traffic is more local to the area seem to have no real complaints of inadequate service from existing carriers. Without support of lawful prior operations involving similar traffic, the testimony of shippers supporting the Strickland applications does not show any public convenience and necessity such as to mitigate or excuse the unlawfulness of both the applicants in their joint operations.[10] 104 M. C. C. at 319.

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[9] See notes 1 and 7 *supra*.

[10] No contention was advanced before the Commission or the District Court that there are any deficiencies or inadequacies in the existing transportation system.

Without the requested regular route, Strickland could not lawfully perform its proposed service. Without an established public need such authority could not properly be granted. The Commission, therefore, was unquestionably correct in concluding that "the public convenience and necessity has not been shown to require operation by Strickland" between Shreveport and New Orleans. Therefore, the Commission had no alternative but to deny the section 207 application. Without the regular route requested in that proceeding, the Commission could not have approved acquisition by Strickland of England's irregular routes, because Strickland at no time proposed to render an irregular-route service.

C. Both Strickland and England failed to sustain their burden of showing fitness. 104 M. C. C. at 317.

The Commission properly recognized that "The question of fitness is always before us in section 5 proceedings." 104 M. C. C. at 315. It is also a statutory requirement in section 207 proceedings. The Commission gave careful consideration to the alleged Strickland-England "interchange" arrangements and concluded that "they constitute operations by Strickland without possession of a certificate." 104 M. C. C. at 316. Strickland, therefore, was found to be operating in violation of the certificate requirements of the Act. 49 U. S. C., §§ 303 (c), 306 (a) (1). The Commission stated: "Any way we slice the apple of the arrangement between applicants it comes out wormy." 104 M. C. C. at 317. Strickland's "speculative" use of these "novel" arrangements was characterized as boldness bordering "on foolhardiness." 104 M. C. C. at 317.

Regarding the consequences of these unauthorized activities, the Commission concluded:

> While we have sometimes approved applications under section 5 despite unlawful prior operations of

vendor, such a finding is generally where vendor but not vendee committed the violations, where the operations were conducted under color of right in the honest belief that they were lawful, where an overriding public need for lawful future operations was shown, or where all such elements were present. Here none of these exceptional conditions seems to exist. 104 M. C. C. at 317.

Unquestionably, therefore, the Commission was precluded from finding that this proposed vendee was fit to receive the operating authority sought, or to perform the new services proposed. Because "such unlawfulness reflects adversely on the fitness of both applicants," the Commission had to deny the section 5 and the section 207 applications.

III.

Discussion of "Questions Presented in Jurisdictional Statement."

A. Jurisdictional Statement Question No. 1.

The first question described in the Jurisdictional Statement challenges the Commission's finding that the Strickland-England "interchange" of trailers was unlawful. The thrust of appellant's arguments centers on this question. However, this question was not essential to the Commission's denial of the applications.

This illegality had nothing to do with the finding that public convenience and necessity do not require the regular-route service of Strickland proposed in the section 207 application. That application was denied on the traditional grounds of the applicant's failure to establish public need for the proposed service. The approval of that application was essential to the performance by Strickland of the regular-route service proposed between

Shreveport and New Orleans, and when it fell for lack of proof, the corresponding section 5 application fell.

The illegality of the Strickland-England "interchange" had nothing to do with the Commission's conclusion that "an entirely new and different service would be created" by Strickland's proposed operations; the Strickland proposal "would be of little public interest"; would have "an adverse effect on the existing competitive situation," or "would be certain to harm the operations of existing carriers." These conclusions compelled the Commission to deny the section 5 application because of applicant's failure to sustain their burden of establishing that the proposal would be "consistent with the public interest," as required by the statute.

The unlawfulness of this arrangement did influence the Commission in reaching the conclusion that both applicants are unfit, but this was not the sole justification for this conclusion. Both Strickland and England were also guilty of unlawful "cross-hauling."[11] 104 M. C. C. at 317.

We will not burden the Court with all facts supporting the Commission's conclusion that the Strickland-England "interchange" was unlawful.

Appellant here, as in the court below, primarily argues the legality of the arrangement in the light of the Commission's rules and regulations governing the lease and interchange of vehicles. The Commission did specify a provision of these regulations violated by the parties.

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[11] Both applicants have a history of unlawful activities. The present owner of England purchased the company without requisite Commission approval, granted only after institution of an investigation. 104 M. C. C. at 301. Strickland, as noted, unlawfully utilized piggyback service into New Orleans. In Strickland's brief before the District Court, this activity was sought to be justified by the comment: ". . . we are confident that members of this Court are aware that 'lawful' and 'unlawful' in Interstate Commerce Commission matters do not generally connote impropriety. . . ." Obviously, the Commission felt otherwise.

In doing so, the Commission was eminently correct, but this was only an incidental finding. The Commission's ultimate conclusion of unlawfulness had nothing to do with any violation of the Commission's leasing and interchange rules. This conclusion was founded squarely on the provisions of sections 203 (c) and 206 (a) (1) of the Act, prohibiting a common carrier from operating without a certificate. Here, Strickland had no authority to operate between Shreveport and New Orleans. The Commission concluded, however, that the operations in question "were really under the management and control of Strickland." These operations "constitute operations by Strickland without possession of a certificate." In reaching this conclusion, the Commission pointed out that there is nothing in the record "to suggest that England (La.) exercised control or responsibility over the traffic or that it functioned as an independent interchange carrier, as required by law." 104 M. C. C. at 316.

In other words, the Commission did not conclude, as suggested by appellant, that the parties improperly conducted the physical and technical requirements incident to an interchange of traffic. The Commission concluded that **there was no interchange.**

The District Court found the Commission's conclusion amply supported by the record. England never assumed any responsibilities as carrier in relation to the shipping or receiving public. Obviously, if the operation was that of England, rather than Strickland, it would be essential for England to have the legal responsibilities attendant to the carrier-shipper relationship.

Recognizing that the record clearly shows that England assumed no liability or responsibility for any loss or damage, appellant argues that this testimony is not consistent with the statute imposing such responsibility on England, regardless of the parties' efforts to avoid such liability; that in legal effect, the arrangement actually

recognized England's liability to the public and constituted an agreement whereby Strickland was to "indemnify" England.

Unfortunately, however, there is not one word of evidence to sustain this position. It is a new concept asserted for the first time in this Court. The unequivocal testimony of the representatives of Strickland and England was that Strickland assumed all responsibility to the public for loss or damage to the cargo and England assumed none. The Commission so found, and appellant can cite no evidence that lends doubt to the propriety of this finding. 104 M. C. C. at 316.

More significant, however, is the manner in which the parties received and delivered such traffic. England, for example, held full authority to serve New Orleans. If the traffic destined to New Orleans had, in fact, been interchanged at Shreveport from Strickland to England, it would have then become England's traffic for further movement to and delivery in New Orleans. Admittedly, however, this was not done. At New Orleans the traffic was delivered by Strickland—not by England. In briefs in the court below Strickland admitted that this was done because the traffic was "Strickland's freight." For example:

> This traffic was billed by Strickland as its own freight in the same way it bills traffic that moves between any other of its on-line points. (Strickland's District Court Brief, page 31.)
>
> . . .
>
> Inasmuch as the freight being interlined or interchanged between Strickland and England (La.) was Strickland freight, England had neither an obligation to or a right to perform pickup, delivery or collection services in connection therewith. (Strickland's District Court Brief, page 39.)

In like manner, some southbound freight moving through Shreveport was destined to points beyond New Orleans. In those instances, Strickland would deliver such freight to England **at New Orleans** for movement by England to destination. Obviously, if this was England's freight received at **Shreveport**, England would have **retained** possession for delivery to ultimate destination. Instead, the freight was placed in England's possession and control at New Orleans, not at Shreveport. This conclusively proves that the parties considered the Shreveport-New Orleans operation under the exclusive direction and control of Strickland—a clear violation of sections 203 (c) and 206 (a) (1).

Strickland argues that the Commission overruled protestants' contentions and based its conclusion on a theory not advanced nor argued before the Commission. See, *e. g.*, J. S., p. 14. Some protestants did attack the legality of the "interchange" on several grounds, some of which were rejected by the Commission. However, these appellees, as protestants before the Commission, vigorously attacked the legality of the "interchange" when the arrangement was first made known to the parties. This occurred **when the first witness testified.** This attack was vigorously pursued in briefs before the Hearing Examiner. When the Examiner ignored these arguments, detailed exceptions were filed specifying the Examiner's error in rejecting requested findings that the arrangement "did not constitute a bona fide interchange of freight between said carriers." Appellees argued vigorously before the Commission that: "these facts clearly show that no 'interchange' of traffic took place"; that the freight remained the freight of Strickland and did not pass to the control of England for movement between Shreveport and New Orleans. **These contentions were specifically sustained by the Commission.** 104 M. C. C. at 316.

Instead of an "unexpected attack on the legality of the interchange," as charged by appellant (J. S., p. 24), it

was a continuous and vigorous attack asserted by appellees at the hearing and in every pleading and brief filed before the Commission.[12]

Notice should be taken of appellant's arguments concerning Strickland's unlawful use of piggyback service and the subsequent rulings of the Commission in **Ex Parte 230, Piggyback Service.**[13] The Jurisdictional Statement takes the position that the Commission, in **Ex Parte 230,** reached a conclusion contrary to its prior conclusion in **Gordons.**[14] This is by no means correct. The sole ground of the Commission's decision in **Gordons** was that, by use rail service, Strickland was engaging in a competitively effective operation **not possible under its authorized operating authority.** Strickland's use of piggyback service was condemned because "Substituted service, in our opinion, should bear some reasonable relationship to the authorized motor carrier service for which it is substituted." In effect, the Commission concluded that, by use of the rail facilities, Strickland was performing a **new** service rather than a **substituted** service.[15]

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[12] Appellant referred to comments in the Examiner's report to the effect that other carriers, including protestants, have engaged in similar "interchange" practices. J. S., p. 13. This voluntary comment of the Examiner was not predicated upon any facts of record and was vigorously denied by protestants. There is not a word of evidence that could support such statement and it really had nothing to do with the issues here involved.

[13] 322 I. C. C. 301 (1964), **rev'd in part,** 244 F. Supp. 955 (N. D. Ill. 1965), **aff'd, American Trucking Ass'ns v. Atchison, T. & S. F. R. Co.,** 387 U. S. 397 (1967).

[14] **Gordons Transp., Inc. v. Strickland Transp. Co., Inc.,** 318 I. C. C. 395 (1962), **aff'd,** 219 F. Supp. 618 (N. D. Tex. 1963).

[15] 318 I. C. C. at 401: "There is no indication that Strickland has transported, or could transport economically, a substantial volume of traffic between the considered points over its route via Houston. Approval of the suspended schedules and of the manner in which Strickland is now operating, under these circumstances, would be contrary to the concept of substituted

The principle which underlies **Gordons** was reaffirmed, not repudiated, in **Ex Parte 230.**[16] Under the Commission's present rules, promulgated pursuant to **Ex Parte No. 230,** Strickland cannot lawfully utilize piggyback service between New Orleans and any points north or east thereof.[17] The specific operation found unlawful in **Gordons** would be unlawful today (otherwise Strickland obviously would be again utilizing such service). In like manner, Strickland cannot lawfully use piggyback service between Shreveport and New Orleans.

B. **Jurisdictional Statement Question No. 2.**

The Jurisdictional Statement describes the second question:

> Did the Commission err in declining to approve the purchase by Strickland of England's Monroe-New Orleans operating rights on the ground that the Hearing Examiner had *sua sponte* recommended the con-

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service and would sanction operations which, competitively, are wholly unlike and unrelated to those authorized by its certificate. Accordingly, we conclude that the present and proposed use of TOFC service by Strickland between the considered points is a destructive competitive practice and is unlawful."

[16] "A regular-route motor carrier is restricted to operation over certain highways, and as its business expands and its operating authority increases on a piecemeal basis, it is likely to find itself with authorized routes between certain points in its system which are not the most direct available. To allow carriers to ignore the routing and gateway limitations in their operating authorities and to provide service between any points they serve, no matter how indirect their authorized operations, would be to allow them to provide totally new services for which no public need had been established, and would largely negate the certificate and permit requirements of the Act." 322 I. C. C. at 361.

[17] Such service cannot be utilized "where the distance from origin to distination over the route including the TOFC movement is less than 85 percent of the distance between such points over the motor or water carrier's authorized service route." 49 C. F. R., § 1090.5.

> version of the irregular authority for which Strickland had applied to regular authority, and that the resulting regular authority—for which Strickland had not applied—was a 'new service' requiring a fresh showing of public convenience and necessity to authorize its transfer?

Contrary to the position that Strickland took before the Commission, it now recognizes that the Examiner *sua sponte* recommended that all of England's irregular-route authority be cancelled and, in lieu thereof, Strickland be granted (1) the regular route applied for in the section 207 application [Shreveport-New Orleans] and (2) a new regular route [Monroe-New Orleans], not applied for by Strickland, not discussed during the hearing, not mentioned in briefs before the Examiner, and, obviously, not expected by Strickland.

Before the Commission, Strickland took the position that the Examiner acted **properly** and **urged the Commission to permit Strickland to receive the benefits of this windfall.** Never did Strickland suggest that the Examiner erred in granting this gratuity.[18] Protestants before the

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[18] Even in the Jurisdictional Statement there is a suggestion that the Examiner's recommendation was supported by precedent (J. S., p. 14, n. 11). Unfortunately, however, in referring to such precedent, appellant has inadvertently stated the opposite of the actual finding of the ICC in this, the only case on the point. The Examiner relied upon **Deaton Truck Lines, Inc. —Purchase—Lavendar**, 97 M. C. C. 256 (1964), **aff'd, Alabama Highway Express, Inc. v. United States**, 241 F. Supp. 290 (N. D. Ala. 1965), **aff'd**, 382 U. S. 106 (1965). Appellant states that this case "holds that the Commission may condition the grant of a § 5 transfer application on a conversion of irregular route authority to regular." The exact opposite was actually involved in that proceeding. The Commission there approved a transfer conditioned upon the vendee's willingness to have **regular**-route authority converted to **irregular** route. Clearly this is acceptable, since a regular-route carrier can perform the identical service rendered by an irregular-route carrier between authorized points, but an irrgular-route carrier is prohibited from render-

Commission, including appellees here, filed exceptions vigorously attacking the propriety of the Examiner's recommendations. In reply, Strickland made no argument seeking to justify or defend the Examiner's startling recommendation and made no specific response to extensive contentions advanced by numerous protestants. However, Strickland's reply ended with the following Conclusion:

> By reason of the foregoing, applicants pray that the Commission adopt the report and order recommended by the examiner in No. MC-F-8798, with the previously discussed modification, and grant the application in No. MC-59680, Sub 142.[19]

In discussing this question, Strickland argues (J. S., pp. 18, 35) that the Commission has never passed upon Strickland's application as filed, this being the application to purchase England's irregular-route authority, and asserts that the Commission addressed itself only to the propriety of accepting or rejecting the Examiner's recommendations.

It would have been entirely proper for the Commission to have considered only the propriety of accepting or rejecting the Examiner's recommendations, **since Strickland**

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ing the scheduled service customarily rendered by regular-route carriers. See notes 1 and 7 *supra*. **Deaton** supports the propriety of a condition **diminishing** the operating rights involved, whereas in the case at bar the Hearing Examiner attempted to **enlarge** such rights "without any request by applicant or publication to the public." 104 M. C. C. at 318.

[19] Strickland's reply is attached as Appendix A. Appellees, as protestants before the Commission, collectively filed extensive specific exceptions to the Examiner's report. These exceptions, totaling over 200 pages, included numerous different contentions. See 104 M. C. C. at 310-312.

The modification in the Examiner's recommendations suggested in Strickland's reply related only to the Examiner's requirement that the Strickland application and the Consolidated application [now before this Court in the related proceeding, No. 1128] **both** be consummated as a condition of approval.

did not file any exceptions to the Examiner's report.[20] As noted, Strickland was content to file a general reply to all exceptions urging "that the Commission adopt the report and order recommended by the examiner."

Actually, however, the Commission did give consideration to Strickland's initial proposal to purchase England's irregular-route authority. After rejecting the Examiner's "ingenious" proposal to elevate the authority from irregular to regular, the Commission did proceed to consider the propriety of approving the acquisition by Strickland of England's **irregular**-route authority:

> As we found in the **prior Strickland-England** case, the acquisition of England's irregular route rights by Strickland and conversion to a link in its long-line regular routes would be of little public benefit and would be certain to harm the operations of existing carriers. 104 M. C. C. at 319.

In other words, the Commission here, as in the prior **Strickland-England** case, concluded that it would not be consistent with the public interest to approve the acquisition by Strickland of England's irregular-route rights. The only difference is that in the instant case the Commission concluded that the proposal would be of "little" public benefit whereas in the initial case it concluded that it would be of "scant" public benefit. See 85 M. C. C. at 557.

Following the Commission's decision, Strickland exercised its right to file a petition for reconsideration. Again, however, **Strickland chose not to suggest that the Examiner erred in recommending the cancellation of England's irregular-route authority and the issuance of regular-route**

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[20] Exceptions to an Examiner's Report are required by the Commission's General Rules of Practice. 49 C. F. R., § 1100.96. The minor modification requested by Strickland, note 19 *supra*, was improperly embodied in its reply to protestants' exceptions, rather than in exceptions.

authority in lieu thereof. Strickland's position before the Commission at this final stage of the administrative proceeding was the same as following the issuance of the Examiner's report, shown by the prayer of the petition for reconsideration:

> WHEREFORE, it is submitted that the Commission should reconsider its July 31, 1967 order and after such reconsideration, make and issue its order adopting the recommendations of the Hearing Examiner.[21]

It is obvious that Strickland took this position in recognition that the record could not support a finding in the present case different from that in the original **Strickland-England** case. The Examiner could find no way of approving acquisition by Strickland of England's irregular routes, the propriety of this proposal having previously been disapproved by the Commission, and the Examiner sought to avoid denial by proposing the solution termed "ingenious" by the Commission. 104 M. C. C. at 318. Following the issuance of the Examiner's report, Strickland never suggested to the Commission that the Examiner's "solution" should be rejected and the application approved as filed.

Strickland cannot assign as error before this Court action of the Commission not complained of by Strickland before the Commission.[22]

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[21] The following portions of Strickland's petition are attached as Appendix B: Caption and Introduction (from page 1) and Basis for Reconsideration and Approval (pages 37-39). Appendices 1-4 to said petition appear in the Jurisdictional Statement as Appendix G, pp. 53a-61a. Appellees contended, and the Commission agreed, that the additional documents proffered with the petition would add nothing of value to the record. See Commission Order, J. S., App. D, pp. 41a-43a.

[22] "It was manifestly improper to reverse the Commission's order in respect of a provision therein as to which the suitor had advised that body it no longer objected but acquiesced." **United States v. Hancock Truck Lines, Inc.**, 324 U. S. 774, 779-780 (1945). ". . . orderly procedure and good administration re-

C. **Jurisdictional Statement Question No. 3.**

The Jurisdictional Statement contends that this proceeding involves one in which the Commission "rested its decision on factors not raised by the parties or previously considered in the proceeding and then denied Strickland any opportunity to respond to the new issues injected into the proceeding by the Commission's Report" (J. S., p. 5).

There is no discussion of this question in the Jurisdictional Statement, but repeated reference is made to appellant's contention that the Commission found the Strickland-England "interchange" unlawful on grounds not suggested by protestants. This contention is without foundation.

The Commission found that the arrangement constituted operations by Strickland without authority, thereby sustaining a contention asserted by protestants at the outset of the hearing, in their briefs before the Hearing Examiner, and vigorously pressed by protestants in their exceptions to the Examiner's report and again in their reply to Strickland's petition for reconsideration.

Reference is also made to the Commission's failure to address itself "to the actual application of the parties—namely, that England's **irregular**-route authority to Monroe be transferred to Strickland" (J. S., pp. 18, 35). This is the same contention previously discussed. Although Strickland waived its right to contend that the Examiner should have approved the application as filed, by failing to file exceptions or otherwise to complain, the Commission

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quire that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts. . . . Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice." **United States v. L. A. Tucker Truck Lines,** 344 U. S. 33, 37 (1952).

did consider the application as filed and did reach the conclusion that it could not be approved, since it was not consistent with the public interest. 104 M. C. C. at 319.

CONCLUSION.

We respectfully submit that the case should be affirmed.

Respectfully submitted,

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ROBERT E. JOYNER,
2111 Sterick Building,
Memphis, Tennessee 38103,

.....

PHINEAS STEVENS,
Post Office Box 22567,
Jackson, Mississippi 39205,

Attorneys for Appellees, Arkansas-Best Freight System, Inc., Gordons Transports, Inc. and Red Ball Motor Freight, Inc.

Of Counsel:

BUTLER, SNOW, O'MARA, STEVENS & CANNADA,
Post Office Box 22567,
Jackson, Mississippi 39205,

THOMAS HARPER,
Post Office Box 43,
Fort Smith, Arkansas 72901,

CHARLES D. MATHEWS,
Post Office Box 47404
Dallas, Texas 75247,

WRAPE & HERNLY,
2111 Sterick Building,
Memphis, Tennessee 38103.

APPENDIX A

Preliminary Statement.

APPENDIX A.

Before the Interstate Commerce Commission.

Re: Strickland Transportation Co., Inc.—Purchase (Portion)—England Transportation Co., Inc.	Docket No. MC-F-8798.
Strickland Transportation Co., Inc., Extension—New Orleans.	Docket No. MC 59680, Sub 142.

Reply of
Strickland Transportation Co., Inc.
and
England Transportation Co., Inc.
to Protestants' Exceptions
to Report and Order of the Hearing Examiner.

Preliminary Statement.

The above-captioned proceedings were heard on a consolidated record with two other proceedings.[1] By report and order served May 16, 1966, the Hearing Examiner recommended approval of the four applications, subject to certain conditions.

Exceptions to the Examiner's recommendations in the four proceedings have been filed by the several protestants therein. Replies to those Exceptions, insofar as they relate to the two applications in footnote (1), will be filed by counsel for the applicants therein.

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[1] No. MC-F-8808, Consolidated Copperstate Lines—Purchase (Portion)—England Transportation Co., Inc., and England Trasportation Company of Texas, and No. MC 22167 (Sub No. 21), Consolidated Copperstate Lines—Extension—Louisiana Points.

This joint reply of Strickland Transportation Co., Inc., vendee, and England Transportation Co., Inc., vendor, herein called Strickland and England, respectively, is directed solely to the exceptions filed in the above-captioned proceedings, either individually or jointly, by protestants Arkansas-Best Freight System, Inc., Braswell Motor Freight Lines, Inc., Campbell Sixty-Six Express, Inc., Gordons Transports, Inc., Herrin Transportation Co., and Red Ball Motor Freight, Inc., herein called Arkansas-Best, Braswell, Campbell Sixty-Six, Gordons, and Red Ball, respectively. East Texas Motor Freight Lines, Inc., herein called East Texas, also opposed the applications at the hearing but filed no exceptions to the examiner's recommendations.

The interests of the several protestants herein do not differ materially, and their contentions, as set forth in detail in their various exceptions, are in general the same. Their exceptions all recite that the examiner's recommended report accurately summarizes the facts with relation to the applications and the proposed transactions. The post hearing briefs filed by all parties herein set forth the list of authorities relied upon by them in support of their respective positions. Accordingly, in the interest of brevity and to avoid lengthy repetition, the facts and citations, as well as protestants' exceptions, will not be repeated herein.

Argument in Support of Reply.

Applicants submit that, despite the myriad "smoke screens" set forth in protestants' exceptions, their sole interest in these proceedings and in fact the paramount issue herein so far as they are concerned, is whether operations by Strickland under the unified rights would adversely affect the existing operations of protestants. In support of their allegations that they would be so affected, all submitted evi-

dence showing their operating authority, equipment, terminals, and the service which they represent they offer to the shipping public. However, protestants failed to submit any specific evidence of actual traffic which would be lost by them as a result of approval herein. East Texas presented no evidence of its traffic. The other protestants, while submitting some studies of traffic transported by them in the Strickland-England territory during certain representative periods of time, could only guess as to a possible loss of traffic they might suffer.

The best evidence of whether approval of the transactions would adversely affect protestants is evidence showing their revenues, income, and operating ratios prior to commencement by Strickland of operations under temporary authority compared to their revenues, income, and operating ratios after institution of, and during the period of, operations by Strickland under temporary authority. The parties stipulated in the record that references could be made to the annual reports filed by them with the Commission with reference thereto. Those figures as set forth in such reports are presented in the following tabulation:

	1963	1964	1965
Arkansas Best			
Revenues	$19,133,036	$20,985,109	$24,183,938
Net Income, Before Taxes	952,027	1,181,037	1,418,990
Net Income, After Taxes	509,363	829,205	812,151
Operating Ratio	93.1	93.7	93.1
Braswell			
Revenues	3,258,347	6,594,667	10,231,070
Net Income, Before Taxes	196,698	359,380	499,111
Net Income, After Taxes	37,713	146,582	283,035
Operating Ratio	97.7	94.2	94.8
Gordons			
Revenues	23,585,092	25,903,273	29,416,696
Net Income, Before Taxes	968,409	2,087,628	2,828,862
Net Income, After Taxes	673,422	1,295,907	1,863,716
Operating Ratio	95.0	90.7	89.7
East Texas			
Revenues	20,901,125	22,828,097	27,711,642
Net Income, Before Taxes	1,457,897	1,808,100	2,553,037
Net Income, After Taxes	856,631	723,386	1,631,540
Operating Ratio	92.1	91.3	90.2
Campbell Sixty-Six			
Revenues	19,361,964	20,940,676	21,590,456
Net Income, Before Taxes	1,380,634	1,151,058	906,695
Net Income, After Taxes	780,598	715,739	467,802
Operating Ratio	92.6	93.0	95.5
Red Ball			
Revenues	26,801,221	30,402,984	36,001,541
Net Income, Before Taxes	1,977,026	2,321,952	2,598,470
Net Income, After Taxes	1,051,000	1,167,663	1,185,831
Operating Ratio	92.6	92.7	92.4
Herrin			
Revenues	12,606,251	12,301,278	12,975,249
Net Income, Before Taxes	425,194	231,247	334,026
Net Income, After Taxes	203,041	115,026	162,804
Operating Ratio	96.7	98.1	97.4
Strickland			
Revenues	25,841,915	28,487,166	30,324,534
Net Income, Before Taxes	439,657	1,224,653	550,632
Net Income, After Taxes	326,015	745,814	320,428
Operating Ratio	97.1	94.6	96.7

Note: For proper comparison with 1965, the figures for Strickland in 1963 and for Braswell and Red Ball for 1963 and 1964 include figures of affiliated carriers merged into the parent company prior to 1965.

Strickland began operations under temporary authority on October 5, 1964. Protestants' revenues as set forth in the above tabulation reflect their actual operations for a period of 21 months prior to the commencement by Strickland of operations under temporary authority and for a period of 15 months thereafter. If approval of the applications were to have an adverse affect on protestants' operations it certainly would be reflected in their revenues for 1965. The foregoing tabulation, however, is positive proof to the contrary. Not one protestant experienced a decline in revenue in 1965 compared to 1963 and 1964. Not one protestant operated at a deficit and all had very favorable operating ratios (6 of the 7 protestants had operating ratios lower than Strickland in each of the three years). In numerous cases, the Commission has stated that protestants must do more than submit conjectural and speculative data to show they would be adversely affected if a transaction is approved. Applicants submit that not only does protestants' evidence fail to substantiate their allegations of adverse effect on them but that the data contained in their own annual reports clearly shows that they would not be so affected by approval of the transactions.

A second contention of protestants is that the evidence requires a finding of dormancy because the England authority was inactive from May 1 to October 5, 1964. It is not disputed that England ceased operations on April 30, 1964. Applicants submit, however, that cessation of operations on that date was because England experienced labor difficulties, that immediately following sale of those rights at public auction on June 17, 1964, at which Strickland was the successful bidder, an application for temporary authority was filed, that upon denial of such application, applicants filed a petition for reconsideration of such denial, which petition resulted in grant of temporary authority, and that operations thereunder were commenced

on October 5, 1964. When a suspension or cessation of operations occurs, the procedures required to be followed by the parties concerned in their efforts to secure final decision by the Commission on an application for temporary authority is necessarily time consuming. Applicants certainly cannot be accused of laxity in their efforts to secure temporary authority herein. Moreover, the period of time (5 months) in which the rights were inactive was a relatively short duration. In applicants' brief are cited cases in which the Commission has approved acquisitions over protestants' contentions of dormancy where rights were inactive for periods of as long as approximately 22 months.

Protestants, in their joint brief and several exceptions, also argue that the application should be denied because the purchase price is excessive. In support of their argument they rely to a great extent on the decision in **Strickland Transportation Co., Inc.—Control—England Transportation Co.**, 85 M. C. C. 549. They infer that the decision in that case denying the application upheld the conclusions of the hearing examiner in his recommended report therein finding the purchase price excessive. Applicants submit that the case cited by protestants affords no basis for passing upon the adequacy of the purchase price in this proceeding. The Commission in that case did not make a finding with respect to whether or not the purchase price therein was excessive but denied the application on other grounds. Furthermore, the agreement in that proceeding was entered into in 1958, and what was reasonable or unreasonable in that year affords no standard of comparison today in view of the upward trend in the national economy over the past several years and the increased and different activities of England between 1958 and 1964.

The England rights were sold at public auction which was attended by a great number of carriers, including

several of the protestants herein. The officers of Strickland, as well as the other bidders, are businessmen in a highly competitive field. None could be accused of deliberately committing their own company to the expenditure of a substantial sum unless they had reasonable assurance of getting value received from such expenditure. It stands to reason that they determined before the auction sale just what the England rights were worth if unified with the operations of their respective companies and that their bids were based on recoupment of the purchase price through unified operations in a reasonable period of time. Their bids forced Strickland to go as high as it did but not beyond what it had determined beforehand what the rights were worth to it. It cannot be denied that under the terms of the transaction Strickland will be able to pay the purchase price without any undue hardship on its financial resources. Applicants submit that Strickland's ability to pay and probability of its recoupment of the purchase price should be the controlling factors in determining the reasonableness of the purchase price.

The division of the England irregular route rights and the re-definition of those rights in terms of regular route authority, in the manner recommended by the examiner, is not a confusing, illogical and impractical carving up of those rights as contended by protestants. Applicants submit that the examiner's proposal is not novel or unique but has been approved by the Commission in numerous cases. See, among others, **Jones Truck Line, Inc.—Purchase—Capitol Freight Lines**, 80 M. C. C. 268, **Blake Motor Lines, Inc.—Purchase—Ryan**, 85 M. C. C. 423, and **Keystone Motor Express, Inc.—Purchase—Hatcher Trucking Inc.**, 101 M. C. C. 216.

Protestants' other issues, as set forth in their joint brief and reiterated in their separate exceptions, relating

principally to the prior jointline operations of England and Strickland and the interest of carrier employees, have been thoroughly analyzed by the examiner in his recommended report. The joint line operations of Strickland and England were carried on with the full knowledge of protestants. Some of the protestants participated in portions of the traffic. All of the protestants participate, to varying degrees, in the practices and procedures which they here condemn. The jointline operations were discussed with local Commission employees and officials before being instituted and were set up by applicants following such discussions and in conformity with the conclusions reached in such discussions. The procedures and practices were proper. Moreover, it would be grossly unfair to applicants to now condemn such practices and procedures (a) as were carried on with full knowledge by the Commission and (2) are standard procedures of protestants as now being retroactively unlawful.

Applicants submit that the examiner's findings therein are sound and should be sustained with the following modification.

One of the conditions imposed by the examiner in recommending approval of the Strickland-England transaction and the transaction referred to in footnote 1 is that both transactions shall be consummated simultaneously and that one may not be consummated unless both are consummated. Applicants request that this condition not be imposed if upon final determination of the proceedings the Strickland-England transaction is approved and the transaction in footnote 1 is denied. The rights are readily divisible in the manner recommended by the examiner and the parties are agreeable to consummating each transaction independently of the other.

Conclusion.

By reason of the foregoing, applicants pray that the Commission adopt the report and order recommended by the examiner in No. MC-F-8798, with the previously discussed modification, and grant the application in No. MC 59680, Sub 142.

Respectfully submitted,

/s/ W. T. Brunson,
W. T. Brunson,
Attorney for Applicants.

Of Counsel:

James L. Smith.

Certificate of Service.

I hereby certify that I have this date served a copy of the foregoing Reply upon all parties of record herein by mailing the same to each such party via prepaid first class mail.

Dated at Oklahoma City, Oklahoma, this 12th day of September, 1966.

/s/ W. T. Brunson,
W. T. Brunson.

APPENDIX B.

Before the
Interstate Commerce Commission.

Re: Strickland Transportation Company, Inc.—Purchase (Portion)—England Transportation Company and Strickland Transportation Company, Inc.—Extension Application.	Docket No. MC-F-8798 Docket No. MC 59680, Sub 142

Petition for Reconsideration and Oral Argument and to Reopen to Receive Tendered Evidence.

Strickland Transportation Company, Inc. and England Transportation Company, joint applicants in the captioned finance proceeding and Strickland Transportation Company, Inc., applicant in MC 59680, Sub 142, hereby petition the Commission for reconsideration of its report and order of July 31, 1967, served herein on August 15, 1967 and reopening of this proceeding for the purpose of receiving the additional evidence tendered simultaneously herewith and for permission to orally argue to the Commission in support of this petition. In support thereof, joint applicants respectfully state to the Commission.

[**Note**: The following portions are omitted: "Statement of the Case," "Basis of Commission's Denial," and "Fifteen Points for Reconsideration," pp. 1-36.]

The applications should be approved, as recommended by the Hearing Examiner, for the reasons:

1.

The operating rights which the Hearing Examiner recommended be approved for transfer to Strickland are not dormant.

2.

The restriction recommended by the Hearing Examiner is sufficiently broad to (a) protect any protestant against any competitive harm or prejudice and (b) the present Strickland rights and the restrictions on the England authority recommended by the Hearing Examiner are adequate to sustain the conclusion that there can be no unlawful cross-haul (through New Orleans) by Strickland after unification.

3.

Unification of the rights will permit Strickland to serve a demonstrated public need with no harm or prejudice to existing carriers.

4.

Need for continuation of and improvement to the existing service has been demonstrated by (a) the operations of Strickland under temporary authority and (b) the testimony and evidence of the supporting shippers.

5.

Approval of the application is in the public interest in that it will permit continuation of and improvement to the existing service without harm or prejudice to the presently well established and strong existing carriers.

6.

Denial of the Strickland and Copperstate applications will not benefit any existing carrier, protestant or applicant. Such denial will undoubtedly result in reinstitution of operations by England.

Copperstate has paid England of Louisiana the agreed consideration for its operating equipment and $30,000.00 for lease of rights, the balance of the Copperstate rental

payments having been allocated to England of Texas. Strickland has paid England $178,200.00 for authority rentals. Deaton has paid England $7,500.00 for the rights it purchased. Therefore, England has received a total of $215,700.00 for authority sales and rentals. It is now financially able to reinstitute operations and to effectively compete in its entire authorized area.

7.

Approval of the applications and subsequent unification of the England rights between New Orleans, on the one hand, and Alexandria, Monroe and Shrevepo t, on the other, with the present rights of Strickland will benefit Strickland in permitting it to economize on its present movements of traffic between New Orleans on the one hand, and its volume traffic points such as St. Louis, Missouri, Chicago, Illinois, Milwaukee, Wisconsin, Detroit, Michigan, Cleveland, Ohio, Philadelphia, Pennsylvania, all of New Jersey, New York, N. Y. and vicinity, all of Connecticut, Springfield and Boston, Massachusetts.

8.

Approval of the applications will be of substantial benefit to the shipping public.

Wherefore, it is submitted that the Commission should reconsider its July 31, 1967 order and after such reconsideration, make and issue its order adopting the recommendations of the Hearing Examiner.

Respectfully submitted,

Strickland Transportation Company, Inc. and England Transportation Company, Joint Applicants,

By /s/ W. T. Brunson,
W. T. Brunson.

Certificate of Service.

I hereby certify that a copy of the above and foregoing has been served on all parties of record in the captioned proceedings by properly addressed, prepaid mail this 22nd day of September, 1967.

/s/ W. T. Brunson,
W. T. Brunson.